

The Honorable Karen A. Overstreet  
Chapter 11  
Hearing Location: 700 Stewart St., Rm.  
Hearing Date July 23, 2010  
Hearing Time: 9:30 a.m.  
Response Date: July 16, 2010

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

In re

QL2 SOFTWARE, INC.

Debtor.

Case No. 10-10209

**DEBTOR'S MOTION FOR AN ORDER  
GRANTING APPROVAL OF POST PETITION  
FINANCING, SECURITY INTERESTS  
PURSUANT TO 11 U.S.C. § 364 AND  
SUPERPRIORITY ADMINISTRATIVE CLAIMS**

QL2 Software, Inc., Debtor and Debtor-in-Possession herein ("Debtor"), moves the Court for an order authorizing the Debtor to borrow up to \$400,000 ("DIP Credit Facility") from DMEP Corporation d/b/a/ Hale Global ("Hale") on the terms of this motion ("DIP Motion"). This motion is supported by the Declaration of Brian Vincent; a proposed order is attached.

On May 14, 2010, the Court approved Debtor's emergency motion to borrow \$100,000 from Hale, the co-proponent of the Debtor's and Sponsor's Joint Plan of Reorganization ("First DIP Order"). (Dkt # 229) The First DIP Order provided that it would be repaid shortly or else the parties would negotiate full DIP financing protections. Debtor has not repaid that loan, and by this DIP Motion, Debtor seeks entry of an order approving an additional DIP Credit Facility,

**DEBTOR'S MOTION FOR  
DIP LOAN - 1**

#758695 v1 / 40548-002

*Law Offices*  
**KARR TUTTLE CAMPBELL**  
*A Professional Service Corporation*

1201 Third Avenue, Suite 2900, Seattle, Washington 98101-3028  
Telephone (206) 223-1313, Facsimile (206) 682-7100

1 secured pursuant to section 364, and with a superpriority administrative claim, in the total amount  
2 of \$400,000 (i.e., the original \$100,000 plus an additional \$300,000, if needed) .

3  
4 This court previously approved a Cash Collateral Order for the Debtor, which Order  
5 anticipated the Debtor would manage its cash without additional financing until confirmation.  
6 That order expired by its terms June 30, 2010. Debtor has concurrently filed a motion to  
7 continue use of cash collateral from July 1 – September 30, 2010, on substantially the same terms  
8 as before, with the addition of Hale as an additional secured party, and incorporating the terms of  
9 the DIP Credit Facility. The court has approved two Disclosure Statements (one by Debtor/Hale,  
10 and a competing one by RateGain IT Solutions Pvt. Ltd. (“RateGain”)), and pursuant to the Order  
11 Approving Disclosure Statements (Dkt # 302), the confirmation hearing is set for August 6, 2010.

12  
13 There are two secured creditors in this proceeding: Graham & Dunn, PC (“G&D”),  
14 securing payment for its legal fees in the approximate amount of \$641,500 and the Tumelson  
15 Family Limited Partnership, Katie Taylor and Kelly Tumelson (collectively, the “Tumelsons”).  
16 The Tumelsons alleged in an amended proof of claim filed May 13, 2010, that they are owed  
17 \$907,228.49; that claim is subject to resolution in the Debtor/Hale Plan as well as the competing  
18 plan proposed by RateGain.  
19

20 Specifically, the Debtor requests that the Court enter an Order pursuant to Bankruptcy  
21 Rule 4001(c) which, among other things will:  
22

- 23 a. Authorize Debtor to obtain the proposed DIP Credit Facility of \$400,000 from Hale  
24 pursuant to the terms outlined in this motion and the attached term sheet; with interest at  
25 8%, to be repaid upon confirmation on the terms in the proposed competing plans of  
26 reorganization.  
27  
28

1 b. Grant Hale a security interest pursuant to section 364 (subordinate to the interest of the  
2 Tumelsons); and

3 c. Grant Hale administrative priority under Bankruptcy Code section 364(c)(1) superior to  
4 all claims except that of the Tumelsons.  
5

6 As Debtor's prior emergency motion (Dkt #219) alleged, Debtor anticipated payment of a  
7 large account receivable in the early part of May. That payment was delayed, leading to the  
8 request for emergency financing to enable the company to meet current payroll obligations. That  
9 payment (in excess of \$600,000) was eventually received, enabling the Debtor to catch up on  
10 payments to vendors and meet payroll for the next two months. The Debtor requests approval of  
11 the DIP Credit Facility in order to permit, among other things, the orderly continuation of the  
12 operation of the business, and to maintain business relationships with its vendors, suppliers and  
13 customers, while it proceeds to confirmation. Timing is a challenge when calculating working  
14 capital cash requirements, and the Debtor wishes to avoid future "emergencies" by making this  
15 request now. QL2 will not draw down against the DIP Credit Facility until this motion is  
16 authorized, and even then, should this additional financing not be necessary, the Debtor will not  
17 borrow the funds, or it will borrow only a portion of these. In an abundance of caution, however,  
18 Debtor has decided to request the full amount it deems necessary, in case, for example, certain  
19 revenues should not materialize or confirmation should be delayed.  
20  
21  
22

23 Bankruptcy Rule 4001(c) governs the procedure for consideration of motions to obtain  
24 postpetition financing. It provides that the motion shall be accompanied by a copy of the credit  
25 agreement and proposed form of order. The Term Sheet is attached to the proposed order as  
26 Exhibit A.  
27  
28

1 Pursuant to sections 364(a) and 364(b) of the Bankruptcy Code, the Debtor has attempted  
2 but is unable to obtain either unsecured credit or unsecured credit allowable under section  
3 503(b)(I) of the Bankruptcy Code as an administrative expense.  
4

5 The Debtor is also unable to obtain secured credit, allowable only under Bankruptcy Code  
6 sections 364(c)(2) and (3) on terms and conditions superior to those provided herein. The Debtor  
7 is unable to obtain credit for borrowed money without granting to Hale (i) a lien on and security  
8 interests in all of the assets of the Debtor pursuant to Bankruptcy Code sections 364(c)(2) and (3)  
9 which lien shall be junior to only the Tumelson Lien, and (ii) a superpriority administrative  
10 expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code and as provided in the  
11 loan terms, but still subject to the superior Tumelson Lien. Authorization of this DIP Credit  
12 Facility will facilitate the ultimate consummation of either proposed plan of reorganization  
13 (Debtor/Hale, or RateGain), and thus the successful conclusion of this case and will maintain the  
14 value of the Debtor's estate during the pendency of this case. Thus, approval of the DIP Motion,  
15 entry of the Order, and borrowing by the Debtor under the DIP Credit Facility terms are in the  
16 best interests of the estate and its creditors.  
17  
18

19 The terms and conditions of the DIP Credit Facility, including those which provide for the  
20 payment of interest to, and fees of Hale, at the times and in the manner provided, are fair and  
21 reasonable, and are believed by the Debtor to be the best available under the circumstances. The  
22 Debtor respectfully requests that the Court approve the requested financing.  
23  
24  
25  
26  
27  
28

1 Dated this 2<sup>nd</sup> day of July 2010.

2 KARR TUTTLE CAMPBELL

3 /s/ Diana K. Carey

4  
5 Diana K. Carey, WSBA #16239  
6 Attorneys for Debtor-in-Possession,  
7 QL2 Software, Inc.

8 CERTIFICATION OF COUNSEL

9 I have read Appendix A to the Local Bankruptcy Rules of the United States Bankruptcy  
10 Court for the Western District of Washington, effective July 1, 2008, Guidelines for Cash  
11 Collateral and Financing Stipulations and believe that the above motion is in compliance with  
12 those guidelines.  
13

14 Dated this 2nd day of July 2010.

15 /s/ Diana K. Carey

16 Diana K. Carey, WSBA # 16239  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28